

**United States Department of Labor
Employees' Compensation Appeals Board**

C.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Midlothian, VA, Employer**

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**Docket No. 15-1011
Issued: August 20, 2015**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

ALEC J. KOROMILAS, Alternate Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 31, 2015 appellant, through counsel, filed a timely appeal from a February 18, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On January 24, 2014 appellant, then a 57-year-old rural carrier, filed an occupational disease claim alleging that he sustained bilateral torn rotator cuffs in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

He noted becoming aware of his condition on December 12, 2013. Appellant stopped work on January 22, 2014.

In an undated statement, appellant advised that his shoulder pain began in October 2013 while loading trays of mail and lifting heavy parcels into his postal vehicle. He noted that since that time he continued to work six days per week. However, by December 2, 2013 his pain was unbearable. Appellant advised that he repeatedly told his supervisors that he needed to take off work for a doctor's appointment, but his request was ignored. He noted that he became aware that his condition was related to his federal employment on January 13, 2014 after his physician informed him that his rotator cuffs tore over a period of several months.

By letter dated February 7, 2014, OWCP notified appellant that evidence was insufficient to establish his claim. He was instructed to return a questionnaire substantiating the factual element of his claim and was advised of the type of medical evidence needed

In a February 9, 2014 statement, appellant attributed his condition to stacking and loading heavy trays on October 15, 2013. He noted that he felt a burning pain in both shoulders each time he lifted trays and parcels. Appellant advised that after the incident he requested leave to see his physician, but his requests were denied. He noted that he continued to work six days a week following the incident and that lifting trays, loading heavy parcels, driving his postal vehicle, and other job-related duties contributed to his condition.

On December 23, 2013 Dr. Steven Jones, Board-certified in orthopedic surgery, advised that appellant related that he had been experiencing significant pain since October, but he did not indicate a specific injury. He noted that appellant related that he had pain prior to that, but it became intensely worse. On physical examination of the right shoulder Dr. Jones found subacromial space tenderness, mild tenderness in the acromioclavicular (AC) joint, decreased power with external rotation, impingement, and rotator cuff tenderness. Examination of the left shoulder revealed AC joint tenderness, subacromial space tenderness, good passive range of motion, decreased active range of motion, and rotator cuff impingement-type findings. Shoulder x-rays revealed type III acromial osteophyte of the left, AC joint arthritis in both shoulders, and subacromial osteophytes suggestive of rotator cuff tears in both shoulders. Dr. Jones assessed rotator cuff impingement, tendinitis, and possible rotator cuff tear.

In January 2, 2014 reports, Dr. William Conrad, a Board-certified diagnostic radiologist, advised that a right shoulder magnetic resonance imaging (MRI) scan revealed a full thickness mildly retracted supraspinatus tear, infraspinatus tendinopathy with intrasubstance tear and myotendinous cyst, thinned biceps tendon with probable split tear and medial subluxation into partially torn superior fibers of the subscapularis tendon, and moderate AC joint degenerative change. An MRI scan of the left shoulder revealed a full thickness retracted supraspinatus tear, medially dislocated biceps tendon with a moderate grade partial tear of the subscapularis tendon, infraspinatus tendinopathy tear, mild glenohumeral and moderate AC joint degenerative changes.

Dr. Jones, on January 13, 2014, advised that MRI scans of both shoulders revealed bilateral rotator cuff tears, with the left being a little worse with 3.5 cm of retraction versus 3.0 centimeters in the right side. He noted that appellant required surgery on both shoulders and that he recommended one surgery at a time with each requiring six months of healing.

In a February 19, 2014 surgical report, Dr. Jones advised that appellant underwent an arthroscopic rotator cuff repair, arthroscopic biceps tenodesis, and arthroscopic anterior acromionectomy. On February 20, 2014 he advised that appellant was experiencing pain after surgery and recommended that appellant begin early movement. Dr. Jones continued to note appellant's status.

On February 22, 2014 a supervisor for the employing establishment advised that appellant only worked for three days after being transferred to his current duty station on November 29, 2013. She stated that initially appellant reported a problem with high blood pressure and later reported his shoulder problem. The supervisor noted that appellant was not at work on December 2, 2013, the date he listed as when he became aware of his condition.

By decision dated May 5, 2014, OWCP denied the claim because medical evidence was insufficient to establish that appellant's conditions were causally related to the accepted work duties.

By letter dated May 8, 2014, appellant, through counsel, requested a telephone hearing.

In a May 3, 2014 report, Dr. Jones advised that he first saw appellant on December 23, 2013 for bilateral shoulder pain. He stated that appellant did not indicate a specific injury at that time. Dr. Jones noted that appellant wrote on the history form that the injury occurred in October, but failed to describe how it happened. He acknowledged that appellant currently claimed that he had a specific injury on October 15, 2013 while lifting trays and parcels of mail weighing up to 75 pounds. Dr. Jones noted that appellant did not create any record of his incident or report the injury to his supervisor. He opined that a rotator cuff tear could certainly come by chronically deficient rotator cuffs over time and become aggravated by heavy lifting, a fall, or any other activity that might put stress on the shoulder. Dr. Jones further opined that medically there was no way to determine the causation of rotator cuff tear by evidence that can be found by diagnostic testing or surgery. He noted that the cause of a rotator cuff tear is usually determined by history and reiterated that the history as given by appellant had been provided.

On December 2, 2014 an oral hearing took place. Counsel argued that Dr. Jones' May 3, 2014 report was sufficient to establish causation in the claim. He also contended that there was a specific injury on October 15, 2013. The hearing representative noted the difference between an occupational disease and traumatic injury and advised appellant to file a Form CA-1 if he was alleging a traumatic injury claim. Images from a July 30, 2014 right shoulder rotator cuff repair were submitted. Several medical reports unrelated to the claimed conditions were also submitted.

By decision dated February 18, 2015, an OWCP hearing representative affirmed the May 5, 2014 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time

limitation, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁴

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

Appellant claimed that he sustained bilateral rotator cuff tears as a result of loading trays and lifting heavy parcels. The record makes clear that appellant loaded trays and lifted parcels of mail as a part of his job. However, the medical evidence is insufficient to establish that the medical condition was causally related to the accepted work conditions.

In a May 3, 2014 report, Dr. Jones advised that appellant did not indicate a specific injury initially, but later claimed that he was injured on October 15, 2013 lifting trays and heavy parcels of mail. Dr. Jones stated that a rotator cuff tear could certainly be aggravated by heavy lifting, a fall, or any other activity that might put stress on the shoulder. Dr. Jones further opined that medically there was no way to determine the cause of rotator cuff tear by evidence found by diagnostic testing or surgery. He noted that the cause of a rotator cuff tear is usually determined by history. Dr. Jones' May 3, 2014 report is insufficient to discharge appellant's burden of proof. Although he opined that a rotator cuff tear "could certainly" result from heavy lifting, his

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁵ *I.J.*, 59 ECAB 408 (2008); *supra* note 3.

⁶ *James Mack*, 43 ECAB 321 (1991).

support for causal relationship is equivocal at best. The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.⁷ Furthermore, it appears that Dr. Jones was referencing a traumatic incident instead of work factors occurring over a period of time. Appellant's claim is for an occupational disease and not a traumatic injury.⁸ Other reports by Dr. Jones are also insufficient to discharge appellant's burden of proof as they do not address causal relationship.⁹

Multiple diagnostic and disability status reports were submitted. However, they are insufficient to discharge appellant's burden of proof as they do not offer an opinion on causal relationship.¹⁰ There is no other medical evidence of record addressing how appellant's work factors caused or contributed to a diagnosed medical condition.

Consequently, appellant has offered insufficient medical evidence to establish his claim. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.¹¹ The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated his condition.¹² Because appellant has not provided such medical opinion evidence in this case, he has failed to meet his burden of proof.

Appellant may submit new evidence or argument as part of a formal written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty.

⁷ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (finding that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

⁸ See 20 C.F.R. § 10.5(q) (an occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift); 20 C.F.R. § 10.5(ee) (a traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift). As noted, *infra*, on December 2, 2014 a hearing representative advised appellant to file a CA-1 if he was alleging a traumatic injury claim.

⁹ *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical opinions that do not state an opinion on causal relationship are of little probative value).

¹⁰ *Id.*

¹¹ See *supra* note 5.

¹² *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). See also *S.T.*, Docket No. 11-237 (issued September 9, 2011).

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board